

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 15, 2002

STATE OF TENNESSEE v. HERMAN LEO MATTHEWS

Direct Appeal from the Criminal Court for Robertson County
No. 99-0401 Robert W. Wedeymeyer, Judge

No. M2001-00754-CCA-R3-CD - Filed September 10, 2002

On March 9, 2001, the appellant pled guilty to driving on a revoked driver's license. See Tenn. Code Ann. § 55-50-504. He was sentenced to 20 days confinement in the Robertson County jail followed by 6 months probation. As part of the plea arrangement, the appellant reserved a certified question for appeal pursuant to Tenn. R. Crim. P. 37(b)(2)(i). That certified question concerns the legality of the stop of the appellant due to the inability of the arresting police officer after sundown to see the rear license plate on the appellant's vehicle. The trial judge concluded that the stop of the appellant was reasonable and denied the appellant's motion to suppress all evidence flowing from the stop. Because we agree that under the facts of this case the stop of appellant's vehicle was reasonable under the Fourth Amendment to the United States Constitution, and Art. I, Sec. 7 of the Constitution of Tennessee, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Amy M. Kroeger, Springfield, Tennessee, for the appellant, Herman Leo Matthews.

Paul G. Summers, Attorney General & Reporter; Patricia C. Kussmann, Assistant Attorney General; John Carney, District Attorney General; and Joel Perry, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At approximately 7:07 p.m. on September 18, 1999, White House Police Officer Tracy Placone was turning north onto Interstate 65 when the appellant, Herman Matthews, drove past him in a 1981 Buick Regal. Officer Placone noticed that there was no light on the car's license plate and he was unable to see if in fact the car had a license plate. He followed the car, saw that there was

a license plate, and called in the license plate number immediately before stopping the car. The dispatcher informed him that the license plate was registered to a Mazda 323.

When Officer Placone asked Matthews for a driver's license, Matthews handed him a Kentucky identification card. Because he smelled alcohol, Officer Placone asked Matthews if he had been drinking and why his license was suspended. Matthews responded that he had consumed two beers and that his license was suspended as the result of a previous DUI conviction. Officer Placone received confirmation that Matthew's driver's license was revoked and arrested him. He found an open can of beer that was cold and half full on the floorboard.

The Robertson County Grand Jury indicted Matthews for driving on a revoked license and violation of the open container law. Mathews moved to suppress the evidence against him, contending that the stop was illegal because the police lacked reasonable suspicion to stop him.

At the suppression hearing Officer Placone described the events leading to the stop. When he first saw the appellant's vehicle it was dark outside. On cross examination, he confirmed that he originally stopped the vehicle because there was no light over the license plate and as a result he was unable to see whether the car even had a license plate. Placone agreed that the light over the license plate came on when the headlights were turned on. The parties stipulated to this fact.

When asked whether Tennessee law required drivers to turn on headlights at a particular time, Officer Placone said that he believed the law required headlights to be on a half hour after sunset, but that he would have to look at the statute to be certain. He acknowledged that sunset could have been at 6:49 p.m. that evening, but reiterated that it had been "pitch black outside" when he first saw Matthews. On redirect examination, he reaffirmed that he was unable to see the license plate when he first observed the car, saying, "[I]t was just black where the license plate was supposed to be."

William Miles, a dispatcher for the White House Police Department, testified that Officer Placone had contacted him at 7:06 p.m. on September 18, 1999. Miles estimated that it took 30 to 45 seconds that evening for him to get the information about the license plate and confirmed that the stop was made at 7:07 p.m.

At the conclusion of the hearing, the trial court concluded that the stop had been reasonable and denied the motion to suppress. On March 9, 2001, the appellant pled guilty to driving on a revoked license, reserving the certified question of whether the denial of the motion to suppress was proper.

STANDARD OF REVIEW ON MOTIONS TO SUPPRESS

On appeal the trial court's decision with respect to a motion to suppress must be affirmed by this Court unless the evidence preponderates against that decision. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Questions concerning the credibility and the weight of the evidence, as well as the resolution of conflicts in the evidence are matters entrusted to the discretion of the trial judge. State

v. Sanders, 842 S.W.2d 257, 259 (Tenn. Crim. App. 1992). On appeal, the appellant has the “burden of showing that the evidence preponderates against the decision of the trial judge.” State v. West, 767 S.W.2d 387, 393 (Tenn. 1989).

THE TRIAL COURT’S RULING

In the instant case the trial judge made the following findings:

What we have in this situation is an officer who seems credible to the Court who says that he couldn’t tell if the vehicle even had a license plate or not because it was too dark for him to see. . . [T]here is a possibility that the little bulb around the license plate was just out and the other lights were on [B]ut assuming that no lights were on and assuming that if he had turned his headlights on, his tail lights would have come on and the little light around the plate would have all come on. And even though you have this statute that says you don’t have to turn your lights on until thirty minutes after sundown, and even crediting that sundown was at 6:49 and thirty minutes had not passed, just applying a kind of reasonable standard to this, if the Officer is credible – there is no contradiction to the fact that he couldn’t even tell if there was a plate there, much less what it said. So, it seems to me like that being the case, it was dark enough that Mr. Mathews should have had – whatever lights he had, should have been on, so I think it was a – I think this stop was reasonable. . . .

ANALYSIS

In Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968), the Supreme Court determined that the law enforcement practice of a brief investigatory stop is constitutionally permissible if the officer has a reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed. In order to determine whether specific and articulable facts constitute reasonable suspicion, this Court must consider the “totality of the circumstances.” State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). Among the relevant elements to be considered are the “objective observations, information obtained from other police officers or agencies, information from citizens, and the pattern of operation of certain offenders.” Id.

In the instant case, the appellant argues that Officer Placone had no legitimate reason to stop his vehicle because he was under no duty to turn his headlights on until 30 minutes after 6:49 p.m. and the stop occurred at 7:07 p.m. It is true that as a general rule Tennessee Code Annotated Section 55-9-406(a) does not require headlights to be on until 30 minutes following sunset. However, the statute also provides that headlights must be on: “. . . at all other times when there is not sufficient light to render clearly discernible any person on the road at a distance of two hundred feet (200') ahead of such vehicle.” Officer Placone testified, and the trial judge accredited his testimony, that

it was dark outside when he stopped the appellant. It thus appears that the appellant should have had on his headlights and in turn his license plate light. Moreover, Tennessee Code Annotated Section 55-4-110(b) required that a vehicle's license plate be clearly visible:

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

The most basic duty of a court interpreting statutes is to ascertain and give effect to the intent and purpose of the legislature. State v. Walls, 62 S.W.3d 119 (Tenn. 2001); State v. Jackson, 60 S.W.3d 738 (Tenn. 2001). Even if the legislature intended as a general rule not to require the display of headlights until a half hour following sunset, it also intended that vehicle license plates be clearly visible at all times. By failing to keep his license plates visible during the half hour following sunset the appellant gave Officer Placone more than sufficient reason to effectuate a stop of the appellant's vehicle. As stipulated by the parties, in an American automobile the license plate light is activated by turning on the headlights. This unfortunate design feature in the appellant's vehicle does not excuse his failure to keep his license plate illuminated so as to keep it clearly visible.

CONCLUSION

In light of the foregoing we are of the opinion that the stop of the appellant's vehicle was reasonable and the judgment of the trial court denying the motion to suppress is affirmed.

JERRY L. SMITH, JUDGE